

(AR-18J)

November 27, 2001

Isaac Elnecave
Policy Specialist
Michigan Environmental Council
119 Pere Marquette Drive, Suite 2A
Lansing, Michigan 48912

Dear Mr. Elnecave:

Thank you for your March 12, 2001, letter regarding the Michigan Environmental Council's comments on Michigan's title V operating permit program. Your comments were submitted in response to the United States Environmental Protection Agency's (USEPA's) Notice of Comment Period on operating permit program deficiencies, published in the Federal Register on December 11, 2000. Pursuant to the settlement agreement discussed in that notice, USEPA will publish notices of program deficiencies for individual operating permit programs, based on the issues raised that USEPA agrees are deficiencies, and will also respond to other concerns that USEPA does not agree are deficiencies.

We reviewed the issues that you raised in your March 12, 2001, letter and determined that you have identified one program deficiency in Michigan's title V operating permit program. USEPA's response to each of your program concerns is enclosed. We will publish a notice of program deficiency for issue 6 in accordance with the settlement agreement. In addition, the Michigan Department of Environmental Quality has given USEPA a written commitment to issue all remaining permits to demonstrate that the state has taken significant action to increase its permit issuance rate. See issue 15. Finally, while reviewing several of your comments, we found that Michigan's program would benefit from additional clarification of certain permit content requirements. Although this is not a program deficiency issue, USEPA will work with Michigan to ensure that the state continues to properly implement these permit requirements. See issues 1 and 13.

For your information, USEPA Region 5 will post all the Region 5 response letters on the Internet at
<http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments>.

USEPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. USEPA will also be posting all response letters on the national USEPA website, and the Agency will publish a Federal Register notice of the availability of those response letters.

We appreciate your interest and efforts in ensuring that Michigan's title V operating permit program meets all federal requirements. If you have any questions regarding our analysis, please contact Beth Valenziano at (312) 886-2703.

Sincerely yours,

/s/

Bharat Mathur, Director
Air and Radiation Division

Enclosures

cc: Dennis Drake, Chief
Air Quality Division
Michigan Department of Environmental Quality

Enclosure
USEPA's Response to Michigan Environmental Council Comments on
Michigan's Title V Operating Permit Program

1. *Comment: general permit condition 4, regarding general requirements for air cleaning devices, should define "installed, maintained, and operated in a satisfactory manner" and specify which rules and laws apply to this condition.*

This general provision is an applicable requirement for pollution control equipment under Michigan's State Implementation Plan (SIP). Pursuant to the 40 C.F.R. § 70.2 definition of "applicable requirement", title V permits must include all applicable SIP provisions. Any source specific requirements that may apply to further define for a source what is "satisfactory" regarding the installation, maintenance, and operation of individual air cleaning devices, as well as any additional rules which apply, are found in the emission unit and group tables of the permits.

For example, Detroit Edison's Monroe Power Plant, SRN B2816, includes requirements for monitoring, logging, and recording the electrostatic precipitator operating data (table F-01.1). There are requirements for daily equipment checks, visible emission observation, and logs of the dust collectors and controls (Appendix 3). The permit requires the source to implement a malfunction abatement plan for the control equipment (table F-01.1., table F-01.2, appendix 3). The permit also requires continuous emission monitoring systems for SO₂, NO_x, CO₂, and opacity (appendix 3), which can be indicators of whether control equipment is operating properly.

USEPA notes that, in addition to including all applicable requirements in the permit, MDEQ often requires sources to prepare preventative maintenance plans which are separate from permits. These plans include very detailed requirements for monitoring the sources' operations and control equipment. Although USEPA is not aware of any inadequacies regarding the level of detail in MDEQ's permits, USEPA will work with MDEQ to ensure that any key monitoring provisions in the preventative maintenance plans which are necessary to meet title V's compliance monitoring requirements are clearly outlined in the title V permits. This is not a program deficiency issue, but rather an opportunity to further ensure that MDEQ's permits consistently address the preventative maintenance plans. USEPA will work with MDEQ to get a commitment from the state ensuring that these plans are

adequately referenced in title V permits, and that any key monitoring provisions necessary to meet title V's compliance monitoring requirements are clearly outlined in the permit.

2. *Comment: general permit condition 5, regarding performance tests, should specify under what conditions a performance test is required and define what constitutes an acceptable performance test.*

This general provision is another applicable requirement under Michigan's State Implementation Plan (SIP). Pursuant to the 40 C.F.R. § 70.2 definition of "applicable requirement", title V permits must include all applicable SIP provisions. Any specific requirements regarding performance tests are found in the emission unit and group tables of the permits.

The general permit condition references the SIP provisions in Michigan Rule (R) 336.2001(1), which address the conditions under which MDEQ may require a performance test. These conditions include: prior to permit issuance; insufficient demonstration of compliance; 12 months have passed since the last performance test for any nonattainment pollutant; 36 months have passed since the last performance test for any attainment pollutant; and after completion of a compliance program.

The general permit condition also references R 336.2003, which contains performance test criteria. The rules require sources to test according to the specific reference test method in Appendix A of Michigan's rules. R 336.2003 also includes other test requirements, including: the number and timing of samples, operating conditions, and sampling requirements. Thus, general permit condition 5 meets the requirements of part 70.

3. *Comment: general permit condition 8, regarding general compliance provisions, should refer to the Clean Air Act and not the state statute.*

General condition 8 is consistent with 40 C.F.R. § 70.6(a)(6)(i). Although 40 C.F.R. § 70.6(a)(6)(i) does state that any permit noncompliance constitutes a violation of the Clean Air Act, any permit noncompliance equally constitutes a violation of the state Act. Further, general condition 8 states: "All terms and conditions of this RO permit that are designated as federally enforceable are enforceable by the Administrator of the EPA and citizens

under the provisions of the Clean Air Act." More importantly, the Act states that any violation of a title V operating permit is a violation of the Act, and is subject to an enforcement action under section 113. Therefore, the citation to the state statute does not affect the enforceability of the permit under the Clean Air Act.

4. *Comment: general permit condition 24, regarding prompt reporting of deviations, is inadequate. Six months is too long a period of time to be considered prompt.*

Michigan's part 70 program adequately defines prompt reporting of deviations, as required by 40 C.F.R. § 70.6(a)(3)(iii)(B). General permit condition 24 requires prompt reporting of deviations in accordance with R 336.1213(3)(c)(ii). For deviations that exceed hazardous air pollutant limits for more than one hour, or that exceed any air contaminant limits for more than two hours, the permittee must notify MDEQ within two business days. For emission exceedances of a shorter duration, and for any other permit deviation, the permittee must report semiannually. This is consistent with 40 C.F.R. § 70.6(a)(3)(iii)(B), which allows the permitting authority to define prompt in relation to the degree and type of deviation likely to occur and the applicable requirements. In addition, this approach is similar to the prompt reporting requirements in the federal permit program, 40 C.F.R. § 71.6(a)(3)(iii)(B), which specifies that certain potentially serious deviations must be reported within 24 or 48 hours, but provides for semi-annual reporting of other deviations.

5. *Comment: general permit condition 26, regarding startup, shutdown, and malfunction requirements do not conform with the September 20, 1999 USEPA memorandum entitled "State Implementation Plans: Policy on Excess Emissions during Malfunction, Startup and Shutdown."*

General permit condition 26 only addresses the state's reporting requirements for abnormal conditions, startups, shutdowns, and malfunctions that result in excess emissions. The condition does not address the state's rules regarding the treatment of excess emissions during these situations. The reporting requirements in general permit condition 26 are found in R 336.1912. USEPA has identified Michigan's startup, shutdown, and malfunction provisions in R 336.1913 and R 336.1914 as interim approval issues because they provide an affirmative defense that is broader than the emergency defense provided in 40 C.F.R. § 70.6(g). MDEQ has

corrected this interim approval issue by rescinding R 336.1913 and R 336.1914. See USEPA's proposed full approval of Michigan's part 70 program, 66 Fed. Reg. 54737, published October 30, 2001.

6. *Comment: general permit conditions 32b and 32c, regarding the application of the permit shield to administrative amendments, must be removed.*

Permit condition 32c states that the permit shield does not apply to administrative amendments made pursuant to R 336.1216(1)(a)(v), until the amendment has been approved by MDEQ. Although the state program calls such changes "administrative amendments," these changes are eligible for the permit shield because the issuance process includes all of the requirements for a significant permit modification, including public, affected state, and USEPA review. 40 C.F.R. § 70.7(d)(4) provides that the permitting authority may, upon taking final action granting a request for an administrative amendment, allow coverage by the permit shield for administrative amendments made pursuant to the enhanced new source review process, provided that the process meets the provisions in 40 C.F.R. § 70.6, 70.7, and 70.8 for significant permit modifications. The state permit condition and corresponding rule requirements in R 336.1216(1)(c)(iii) are consistent with the enhanced new source review provisions in 40 C.F.R. § 70.7(d)(1)(v), and permit condition 32c does not constitute a deficiency.

However, USEPA agrees with the commenter that general permit condition 32b improperly provides for the application of the permit shield to administrative amendments. Permit condition 32b states that the permit shield shall not apply to administrative amendments made pursuant to R 336.1216(1)(a)(i-iv) until the department has approved the changes. R 336.1216(1)(b)(iii) provides the underlying authority for this permit condition. As stated previously, 40 C.F.R. § 70.7(d)(4) allows a permit shield only for administrative amendments that meet the provisions for enhanced new source review. Administrative amendments pursuant to R 336.1216(1)(a)(i-iv) are therefore not eligible for the permit shield. USEPA will issue a notice of program deficiency to MDEQ, requiring the removal of the authority to apply the permit shield in R 336.1216(1)(b)(iii).

7. *Comment: general permit condition 36, regarding section 112(r) requirements, should be amended to make clear whether the source is or is not subject to the regulations stated.*

General permit condition 36 requires sources to meet the accidental release prevention requirements of section 112(r) of the Clean Air Act, if the source is subject to section 112(r). The condition is written generally because of the nature of the section 112(r) requirements, which have a unique implementation interface structure that is different from other applicable permit requirements.

One reason why section 112(r) implementation is unique is because MDEQ, the title V permitting authority, is not the implementing agency for section 112(r) requirements. USEPA has not delegated the accidental release program to the state, and USEPA is the implementing agency in Michigan. As the title V permitting authority, MDEQ has several general section 112(r) responsibilities, which are found in 40 C.F.R. § 68.215(e), and are further discussed in an April 20, 1999 memorandum from Steven J. Hitte (OAQPS) and Kathleen M. Jones (OSWER) entitled: "Title V Program Responsibilities concerning the Accidental Release Prevention Program". These responsibilities include: verifying that sources register and submit a risk management plan, verifying that sources certify compliance with the requirement to submit a risk management plan, and general enforcement responsibilities.

To meet its accidental release prevention program obligations under 40 C.F.R. § 68.215(e), MDEQ does have mechanisms in place to address the permitting authority's section 112(r) obligations. MDEQ's part 70 application form S-001 requires the source to identify whether it is subject to section 112(r), and whether it has submitted a risk management plan. General permit conditions 36-39 include the section 112(r) requirements, including the requirement to submit a risk management plan, the deadlines for submitting a plan, requirements for submitting any information necessary to assure compliance with section 112(r), and requirements to annually certify compliance with section 112(r). In addition, MDEQ's annual compliance certification form, EQP-5736, requires the source to certify compliance with all permit conditions, including the general section 112(r) requirements. Sources not meeting permit conditions 36-39 are required to submit additional information on the deviation report form, EQP-5737.

Another reason why section 112(r) implementation is unique is because applicability is based on having a listed 40 C.F.R. § 68.130 substance over the threshold quantity located at the facility. Although the general section 112(r) permit conditions do not definitively state whether an individual

source is subject to the risk management plan requirements, the permit structure ensures that the permit covers any newly subject source, or any source whose applicability fluctuates, thereby ensuring that the section 112(r) permit obligations remain up to date.

This is particularly important because a source that previously was not subject to section 112(r) can immediately trigger the risk management plan requirements simply by bringing a sufficient quantity of a section 112(r) substance on site. This permit structure also ensures that a source whose section 112(r) applicability fluctuates on a short term basis, depending on the source's day-to-day inventory of various chemicals, always has a permit which includes its section 112(r) obligations. In addition, although the permit conditions are generic, they are enforceable.

8. *Comment: of five permits reviewed, the commenter found no requirements for periodic stack testing for particulate matter. Some permits included continuous opacity monitoring, but permits did not correlate the opacity readings to particulate matter emissions. Permits should include particulate matter stack testing at least annually.*

Part 70 does not require annual particulate matter stack testing. 40 C.F.R. § 70.6(c)(1) requires permits to include testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit (for a more detailed discussion of the authority for part 70's monitoring requirements, see USEPA's 11/16/2000 response to the Wyoming Outdoor Council's Pacificorp permit petition¹).

The five permits the commenter referenced include monitoring requirements for the particulate matter limits. The key compliance monitoring requirements for PM in these permits are the operational requirements on control equipment. The continuous opacity monitors also may provide information which may be indicators of compliance with the PM limits; however, any correlation between opacity and PM emissions is case specific. Each permit's relevant conditions is summarized below.

¹The response is available on the Internet on USEPA Region 7's title V petition database, at <http://www.epa.gov/region07/programs/artd/air/title5/titlevhp.htm>.

The Consumers Energy J.R. Whiting permit, SRN B2846, includes PM limits for the boilers, ash handling, and coal handling. The permit requires the use of electrostatic precipitators and baghouses, inspection of the ash handling and coal handling operations 4 of every 7 days, weekly observation and checks of baghouse differential pressures, and monitoring of the electrostatic precipitators. The permit further requires the permittee to implement and maintain a fugitive dust plan, which includes detailed operational requirements on coal handling and dust collection. Each boiler also has a continuous opacity monitoring system. Stack test data from 1995-1998 demonstrated that the boilers were well below their PM limits, ranging from 44% to 88% of the permitted limits.

The Wisconsin Electric Power Company Presque Isle permit, SRN B4261, includes PM limits for the boilers. The permit requires the use of baghouses and electrostatic precipitators, and requires the permittee to implement and maintain a malfunction abatement plan and a fugitive dust minimization plan, which includes detailed operational requirements on the baghouses, the electrostatic precipitators, ash handling, and material handling. Each boiler also has a one time stack test requirement during the permit term and each boiler has a continuous opacity monitoring system. Stack test data from 1991, 1992, and 2000 demonstrated that the boilers were well below their PM limits, ranging from 9.7% to 49% of the permitted limits.

The Viking Energy McBain permit, SRN N1160, includes PM-10 limits on the boiler. The permit requires the use of a cyclonic collector and electrostatic precipitator, and requires the permittee to implement and maintain a malfunction abatement plan and a fugitive dust minimization plan, which includes detailed operational requirements on the electrostatic precipitator and materials handling. The permit also requires a continuous opacity monitoring system and a PM-10 stack test once every 5 years. PM-10 emissions are calculated using source specific emission factors based on the most recent stack test data. Stack test data from 1989-2000 demonstrated that the boiler was well below its PM-10 limit for all tested fuels, with total suspended particulate (TSP) stack tests ranging from 6% to 96% of the PM-10 limit, depending on the fuel burned (PM-10 only comprises a portion of TSP). Stack test data over the last 5 years show TSP emissions ranging from 6% to 88% of the PM-10 limit.

The draft Viking Energy Lincoln permit, SRN N0890, which has not yet been proposed to USEPA, includes PM-10 limits on the

boiler. The draft permit requires the use of a cyclonic collector and electrostatic precipitator, and requires a continuous opacity monitoring system and a PM-10 stack test once every 5 years. PM-10 emissions are calculated using emission factors based on the most recent stack test data. In addition, MDEQ intends to add to the proposed permit the requirement that the permittee implement and maintain a malfunction abatement plan and a fugitive dust minimization plan, which includes detailed operational requirements on the electrostatic precipitator and materials handling. These conditions will be consistent with the conditions in the Viking McBain permit. Stack test data from 1989-2000 demonstrated that the boiler was well below its PM-10 limit for all tested fuels, with total suspended particulate (TSP) stack tests ranging from 2% to 33.6% of the PM-10 limit, depending on the fuel burned (PM-10 only comprises a portion of TSP).

The Detroit Edison Monroe permit, SRN B2816, includes PM limits for the boilers and for coal handling. The permit requires the use of electrostatic precipitators and baghouses, monitoring and recording of the electrostatic precipitator operating data, and daily observation and visible emissions checks of the baghouses. The permit further requires the permittee to implement and maintain a malfunction abatement/preventative maintenance program, which includes detailed operational requirements on coal handling, dust collection, the electrostatic precipitators, and the flue gas conditioning system. Each boiler also has a continuous opacity monitoring system. Because MDEQ does not have any current PM stack test results, the state has requested stack tests for all four units. MDEQ will use the results of these tests to determine whether there is any need for additional monitoring in the permit.

USEPA also suggests that the commenter take advantage of individual permits' public comment periods, and raise specific permit concerns with the permitting authority at that time. The draft permit public comment period is an important component of the permit issuance process, and is an ideal time for the permitting authority to address concerns regarding the adequacy of monitoring, enforceability, etc.

9. *Comment: two specific permits require VOC stack testing once every five years, and emission factors based on the stack tests are used to determine emissions. The permits should require annual VOC stack tests to meet the periodic monitoring requirements, and to ensure that the emission*

factors based on the stack tests are reliable and not outdated.

Part 70 does not require annual VOC stack testing. As discussed above, part 70 requires permits to include testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

The two permits the commenter referenced include monitoring requirements for the VOC limits. The key compliance monitoring requirements for VOC in these permits are: a stack test once every 5 years, monitoring and recording VOC emissions based on emissions factors, and monitoring the operating parameters of the boilers. Each permit's relevant conditions is summarized below.

The Viking Energy McBain permit, SRN N1160, includes VOC limits on the boiler. The permit requires a VOC stack test once every 5 years, and VOC calculations using emission factors based on the most recent stack test data. The permit also requires the permittee to implement and maintain a preventative maintenance plan which includes monitoring the operational parameters of the boiler. Stack test data demonstrated that the boiler was well below its VOC limit for all tested fuels, ranging from 1% to 7.5% of the limit, depending on the fuel burned.

The draft Viking Energy Lincoln permit, SRN N0890, which has not yet been proposed to USEPA, includes VOC limits on the boiler. The permit requires a VOC stack test once every 5 years, and VOC calculations using emission factors based on the most recent stack test data. MDEQ also intends to add conditions requiring the permittee to implement and maintain a preventative maintenance plan, which will include monitoring the operational parameters of the boiler. These conditions will be consistent with the conditions in the Viking McBain permit. Stack tests from 1994 did not detect any VOC emissions. Because the detection level of the stack test is 0.1 parts per million (approximately 0.00018 lbMMBtu), VOC emissions were less than 1% of the emission limit. To meet the permit requirement that stack tests be performed every 5 years, MDEQ plans to request a stack test once the permit is issued.

As mentioned above, USEPA also suggests that the commenter take advantage of individual permits' public comment periods, and raise specific permit concerns with the permitting

authority at that time. The draft permit public comment period is an important component of the permit issuance process, and is an ideal time for the permitting authority to address concerns regarding the adequacy of monitoring, enforceability, etc.

10. *Comment: fugitive dust emission monitoring requirements are inadequate. One specific permit required only weekly non-certified visual inspections. One specific permit included no fugitive dust requirements at all. One specific permit included only a general statement regarding minimizing fugitive emissions, that is not practically enforceable. All permits with fugitive emission requirements should include proper monitoring and recordkeeping, including daily certified inspections and logs.*

USEPA disagrees that the three permit examples only include the fugitive dust emission monitoring requirements that the commenter noted. Each permit's relevant conditions are summarized below.

As the commenter notes, the Wisconsin Electric Power Company Presque Isle permit, SRN B4261, includes a weekly non-certified visual inspection of the fugitive dust sources. However, table F-1.2.VI also includes numerous additional fugitive dust requirements, including: dust control equipment requirements, fence heights, dust suppressant spraying requirements, coal pile configurations, material handling operating restrictions, etc. In addition, Appendix 10 of the permit includes the source's fugitive dust emissions minimization plan, which includes descriptions of the fugitive dust sources and practices to minimize emissions, including enclosed conveyor systems, visual observations, weather considerations, coal pile stockpiling and configurations, road cleaning, ash handling requirements, control equipment maintenance checklists, etc.

The commenter incorrectly states that the Consumers Energy J.R. Whiting permit, SRN B2846, includes no fugitive dust monitoring requirements. Table E-01.1 includes ash handling requirements, including operation of baghouses, ash water suppressant requirements, and the requirement to implement a fugitive dust plan. Appendix 3 further requires inspections at least four out of seven days for all ash and coal handling requirements, including baghouses, and weekly observations of all baghouse differential pressures. In addition, the fugitive dust emission minimization plan includes descriptions of the dust control processes, requirements for

operating the dust suppression systems including spraying, baghouses, enclosures, inspections and maintenance logs, etc.

As the commenter notes, the Detroit Edison Monroe permit, SRN B2816, includes the requirement in table F-01.2 that the coal handling system should be operated in a manner which will minimize the fugitive particle emissions. However, the permit also requires the source to: operate and maintain two ambient air monitors at the facility and report the data to MDEQ monthly; operate and maintain the 21 baghouses, including the emergency reclaim system baghouses; check and observe the dust collectors daily for no visible emissions, and maintain daily records; and implement a dust collector malfunction abatement plan. The plan includes additional detailed fugitive dust requirements, including; unpaved road dust suppressant spraying and speed limits; storage pile spraying, configuration, and handling; materials handling requirements including baghouse operation, etc.

11. *Comment: Permits include very general citations to complex requirements, making it difficult to find the specific part of the rules that apply to the permit condition. Two permit examples given- 40 C.F.R. part 75 acid rain reference, 40 C.F.R. part 60, subparts A and D reference.*

The Wisconsin Electric Power Company Presque Isle permit, SRN B4261, does include a general reference to 40 C.F.R. part 75 in table E-1.1(III)(A)(2). These requirements pertain to the continuous emissions monitoring provisions of the Federal Acid Rain Program. The federal acid rain regulations allow for this general reference to the part 75 monitoring requirements. 40 C.F.R. § 70.1(d) states: "The requirements of part 70... shall apply to the permitting of affected sources under the acid rain program, except as provided herein or modified in regulations promulgated under title IV of the Act (acid rain program)." In turn, 40 C.F.R. § 72.50(a)(1), 72.31(d), and 72.9(b)(1) require the following permit condition: "The owners and operators... shall comply with the monitoring requirements as provided in part 75 of this chapter." In addition, the federal monitor certification process under 40 CFR part 75, which includes the submission to USEPA of a detailed monitoring plan for each affected unit, is separate from the part 70 permitting process.

The draft Viking Energy Lincoln permit, SRN N0890, does include a general reference to 40 C.F.R. part 60, subparts A and D in table E-1.2(II)(B)(2) and (3). USEPA believes that

it would be clearer if the permit included a specific citation to the section of the rule which contains the emission limit. MDEQ has agreed to add the specific citations to the Viking Lincoln permit before it is proposed to USEPA for review. USEPA believes that this is an issue regarding the clarity of a specific permit condition, and does not warrant a finding of program deficiency.

12. *Comment: permits reference the general permit to install rule, and should instead reference specific permits to install. Three permit examples given.*

40 C.F.R. § 70.6(a)(1)(i) requires that the permit cite the origin of and authority for each permit condition. MDEQ's permits meet this requirement by citing the state's underlying new source review rule, and by including a list of all NSR permits in Appendix 6 of every title V permit. MDEQ made this formatting decision to accommodate the state's NSR permit system, which typically issues NSR permits on a unit by unit basis. As a result, a single source may be subject to 10, 20, or even more NSR permits. In cases where the Appendix 6 list includes more than one NSR permit per unit, the public can contact MDEQ for assistance in determining which applicable requirements came from each NSR permit. As discussed in the final part 70 preamble (57 Fed. Reg. 32275): "Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. This requirement is satisfied by citation to the state regulations or statutes which make up the SIP or implement a delegated program."

13. *Comment: permit conditions are sometimes vague and not practically enforceable. Three specific examples given, plus others referenced elsewhere in comment letter. The commenter is concerned that permits do not properly specify monitoring and recordkeeping requirements.*

USEPA agrees that permit terms which use the phrase "in a manner acceptable to the Air Quality Division" can be confusing to citizens and may affect a permit's enforceability. However, this is a complex issue which must be analyzed on a case by case basis, taking the underlying applicable requirements and other permit conditions into account.

Two of the permit citations are continuous emission monitoring requirements originating from the Federal Acid

Rain Program, State Implementation Plan monitoring requirements, and New Source Review. The acid rain program monitoring requirements are highly prescriptive, and include federal certification of the monitors. Therefore, the acid rain program monitoring requirements limit any discretion MDEQ may have under its SIP and New Source Review monitoring requirements. The third permit example (Viking Lincoln) provides MDEQ discretion in determining how the source calculates the amount of fuel burned. MDEQ's fuel handling requirements for Viking Energy Lincoln are included in a detailed fuel handling plan which describes exactly how the fuels are weighed before they are combusted (front end loader with an on board bucket scale, electronic data logger specifications, etc.). This plan is more detailed than is necessary to meet the title V monitoring requirements, which are sufficiently addressed in the permit. The permit requires daily calculation and recordkeeping of the fuel burned for each fuel type, which assures compliance with the 24 hour tonnage limits in table E-1.2.II.

Although USEPA has determined that the commenter's concerns regarding individual permit conditions do not indicate a program deficiency, USEPA intends to work with MDEQ to ensure that permits continue to include sufficient compliance monitoring provisions. Although in many cases discretionary statements stem from the authority of the state's New Source Review Program and/or the SIP, title V nonetheless requires that permits include monitoring necessary to assure compliance. USEPA has found that, although the permits in question include adequate monitoring, MDEQ often requires preventative maintenance plans which are separate from the permit. These plans include very detailed requirements for monitoring the sources' operations and control equipment. USEPA will work with MDEQ to get a commitment from the state ensuring that these plans are adequately referenced in title V permits, and that any key monitoring provisions necessary to meet title V's compliance monitoring requirements are clearly outlined in the permit.

14. *Comment: commenter cites a permit that impermissibly designates a permit condition as state only enforceable.*

The draft Viking Energy Lincoln permit, SRN N0890, does designate monitoring requirements as state enforceable in table E-1.2(III)(B)(2) and (3). MDEQ agrees that the authority citations and state enforceable only designations are incorrect, and will correct the permit before it is proposed to USEPA. This was a permit specific drafting

error, and does not indicate a problem with the program as a whole.

15. *Comment: state program is underfunded. Commenter cites a state Auditor General report on fee sufficiency, and also states that only 55% of the initial permits have been issued is evidence that the program is underfunded.*

The commenter correlates permit issuance delays to the sufficiency of permit fees. Fees are only one potential component of why states did not meet the permit issuance deadline. MDEQ's initial title V program submittal demonstrated that the state's title V fee program is sufficient. However, USEPA will review and act on the state's revised fee program as a part of MDEQ's revised title V program submittal, dated June 1, 2001 and updated September 20, 2001. USEPA also notes that Michigan's September submittal includes information regarding the state's recently updated fee authority.

MDEQ has made significant progress in issuing title V operating permits, and as of November 2001, has issued 68% of the initial permits. However, a number of permitting authorities, including MDEQ, have not issued permits at the rate required by the Clean Air Act. For many permitting authorities, because of the sheer number of permits that remain to be issued, USEPA believes that a period of up to two years will be needed for the permitting authority to be in full compliance with permit issuance requirements of the Clean Air Act. If the permitting authority has submitted a commitment to issue all of the permits by December 1, 2003, USEPA interprets that the permitting authority has taken "significant action" to correct the problem and thus USEPA does not consider the permit issuance rate to be a deficiency at this time. An acceptable commitment must establish semi-annual milestones for permit issuance, providing that the state will issue a proportional number of the outstanding permits during each 6-month period leading to issuance of all outstanding permits. All outstanding permits must be issued as expeditiously as practicable, but no later than December 1, 2003. USEPA will monitor the permitting authority's compliance with its commitment by performing semi-annual evaluations. As long as the permitting authority issues permits consistent with its semi-annual milestones, USEPA will continue to consider that the permitting authority has taken "significant action" such that a notice of deficiency is not warranted. If the permitting authority fails to meet its milestones, USEPA will issue a Notice of

Deficiency (NOD) and determine the appropriate time to provide for the state to issue the outstanding permits.

MDEQ submitted a commitment and a schedule to USEPA providing that MDEQ will issue 20% of the remaining permits June 1, 2002, 50% by December 1, 2002, 70% by June 1, 2003, and 100% by December 1, 2003. These milestones reflect a proportional rate of permit issuance for each semiannual period. A copy of the permitting authority's commitment is enclosed. This commitment demonstrates that MDEQ has taken significant action to correct its permit issuance rates, and therefore an NOD is not warranted at this time. As stated above, however, USEPA will continue to monitor MDEQ's permit issuance progress on a semiannual basis, in accordance with MDEQ's permit issuance commitments, to ensure that the state continues to take significant action to issue the remaining operating permits.